

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown
classification; PHOENIX DIGITAL GROUP
LLC, an Arizona limited liability company;
JEFFREY CONWAY, an individual; DAVID
SCHAEFER, an individual; JORDAN GREEN,
an individual; and JAMES MAY, an individual,

Defendants.

Cause No. 2:21-cv-0811 TSZ

**DECLARATION OF JAMES
MAY IN OPPOSITION TO
PLAINTIFF'S MOTION TO
DISMISS**

**Note on Motion Calendar:
October 28, 2022**

Oral Argument Requested

I, James May, under penalty of perjury under the laws of the United States, state and
declare as follows:

1. I am one of the individual Defendants in the above captioned matter, one of the
Counter-Claimants in the above captioned matter, and have knowledge of the
facts stated herein.
2. I have technical training in both the operation of computers and the structure
and operation of computer software and am familiar with the technical issues
in this matter.

- 1 3. At all relevant times, I have owned and operated a personal computer at my
2 residence that I use for a variety of both business and private matters. On this
3 personal computer, I maintain a number of files and other data that are
4 personal, confidential and that I do not share with others. I am the author of
5 these personal and confidential files and claim copyrights in them.
- 6 4. To protect against unauthorized access to my personal and confidential files
7 and data, I use various passwords known only to me. In addition, I use a
8 firewall to protect against unauthorized access to my personal and confidential
9 computer files and data that is intended to and does function to deter attempts
10 by third parties to access my computer via the Internet.
- 11 5. I have reviewed “Exhibit B” (Dkt#63-2) to my counter-claim which I
12 understand is a document provided by Bungie during discovery in this matter
13 and that bears Bungie’s document production control number,
14 “BUNGIE_WDWA-0000409XLXS.” The data in “Column3” of this Bungie
15 document lists several computer file paths that I recognize as being files on my
16 own computer and that contain my personal and confidential records and and
17 data.
- 18 6. In particular, Exhibit B (i.e., “BUNGIE_WDWA_0000409.XLSX”) shows that
19 on December 17, 2019, file “g:\work files\reclass\x64\plugins\
20 reclasskernel64.sys” was identified by Bungie as an AimJunkies related binary.
21 The file described by Bungie is a file that exists on an external hard drive
22 attached to my personal computer.
- 23 7. The file “reclasskernel64.sys” is described in the document
24 (BUNGIE_WDWA_0000367) dated 2018 and shows a file path (C:\Users\
25 james\Desktop\ReClass.NET-KernelPlugin-master\bin\ReClassKernel64.pdb)
26 which is another file on my personal computer and this file is associated with
27 the creation of, but is not necessary in the regular use of (reclasskernel64.sys).
- 28

1 A .pdb file describes the specifics of a program's structure which are useful for
2 analysis and debugging but unnecessary for the program to be run by the
3 computer.

4 8. Another document produced by Bungie in this matter, namely
5 "BUNGIE_WDWA_0000367", a true and correct copy of which is attached
6 hereto as Exhibit A, also shows that the file (reclasskernel64.sys) was signed
7 by Phoenix Digital Group LLC. The digital signature for a signed file is stored
8 within the file that is signed. This demonstrates that Bungie was accessing
9 files related to Phoenix Digital Group LLC resident on my computer.

10 9. I observed and heard, the deposition taken by my counsel on October 4 and 5,
11 2022 of Bungie's Engineering Lead, Dr. Edward Kaiser, who has previously
12 filed a Declaration on Bungie's behalf in this matter (Dkt#36).

13 10. During the course of the deposition, Dr. Kaiser testified that Bungie obtained
14 additional information from my computer and described the nature of files
15 known to VirusTotal by using VirusTotal's search feature to crosscheck files
16 using hashes obtained from metadata available within the Destiny 2 process.
17 The file (reclasskernel64.sys) Bungie claims to have crosschecked with
18 VirusTotal was first uploaded to VirusTotal on March 8, 2022. However, as
19 March 8, 2022 is significantly after December 17, 2019 when Bungie first
20 accessed my personal computer, no "crosscheck" with VirusTotal could have
21 been made at that time.

22 11. Bungie could have only obtained this string for the pdb file path by obtaining
23 access to, opening and copying the contents of the file ("reclasskernel64.sys")
24 themselves. When a .pdb file is generated, the original path to it is stored
25 within the resulting binary (.sys) file. Bungie claims they can access file
26 hashes and file paths from a process that attaches to their process. However,
27 the file on my computer at the location "C:\Users\james\Desktop\
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1 ReClass.NET-KernelPlugin-master\bin\ReClassKernel64.pdb”, which appears
2 in Exhibit B to my counterclaim, never attaches to the Destiny 2 process at any
3 time, and cannot possibly be started as a Windows process. This is because as
4 a .pdb file, it is not executable. Accordingly, Bungie could not have obtained
5 this information without directly opening and accessing the contents of the file
6 “reclasskernel64.sys” which is a private file resident on my personal computer.

7 12. In addition, the specifics of the digital signature for file “reclasskernel64.sys”
8 could only have been available to Bungie if Bungie had accessed the contents
9 of the file directly on my computer, or if Bungie had employed methods to
10 query information about other programs running on the system not directly
11 available from within the Destiny 2 process. I was not aware of this possibility
12 of information gathering when I agreed to the terms of the LSLA, nor, to my
13 knowledge, had Bungie ever provided me with fair warning or notice that it
14 would be doing this.

15 13. I am familiar with Bungie’s Terms of Service (“LSLA”) as well as the
16 “(privacy policy)” referenced therein. After reading these documents, I
17 reasonably understood that the data to be collected by Bungie would my ip
18 address, hardware information, username, playtime, rank, score, experience per
19 match, how long I played, dates and times played, platform used (namely,
20 “PC,Playstation,XBOX”). Never did i think I would have to worry about
21 Bungie digging into my personal, work related, and proprietary files and
22 reading file information not readily available to anyone else other than myself.
23 Nor did Bungie ever notify me or otherwise give me fair notice that it would
24 do such things.

25 14. In addition to the foregoing, and as shown by Bungie’s document
26 “BUNGIE_WDWA_0000409.XLSX,” Bungie also accessed information from
27 my private work folder on my external drive. This is evident from reference in
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1 that document to the file path "g:\work files\"," which directs my external drive
2 and which contains proprietary technology and trade secrets known only to me.

3 15. Another instance of Bungie collecting data without my authorization occurs in
4 the same document, "BUNGIE_WDWA_0000409.XLSX" with the file path
5 "c:\users\james\desktop\reclass\blah64.exe." This filepath is the location of a
6 file on my personal computer representing the default desktop in the Windows
7 operating system for my user "james" which contains personal and proprietary
8 files. The randomly named .sys files, such as "[c:\anobx14.sys](#)" in document
9 "BUNGIE_WDWA_0000409.XLSX" produced by Bungie, are in the root
10 directory of drive [C:\](#) on my computer and share the same file hash
11 (6E73A01E5DFC8D8DEA4D8A99E9273A04). These files in no way attach
12 to or manipulate the Destiny 2 process and have nothing to do with Destiny 2
13 in any shape or form. Again, Bungie provided no notice that it would be
14 accessing such personal files on my personal computer, and again, such files
15 are none of Bungie's concern as they have absolutely nothing to do with the
16 Destiny 2 game that is the subject of this action.

17 16. As a result of this breach of security by Bungie, I have been forced to purchase
18 a new computer to ensure any traces of the invasive malware that was used
19 without my consent has been completely removed. I have spent in excess of
20 \$2702 purchasing new computers and drives, and I have spent in excess of 40
21 hours reviewing files for indication of compromise, cleaning such files when
22 detected, and getting the new computer set up and ready for work. As the fair
23 value of my time is approximately \$75 per hour, my direct monetary damage
24 as a result of Bungie's improper accessing of my computer and files contained
25 thereon exceeds \$5000. I incurred these expenses between May 28, 2022 and
26 June 15, 2022. This does not include the additional time and expense incurred
27 in defending myself against Bungie's false accusation that I created, developed
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1 or otherwise assisted in producing the “cheat software” at issue in this matter,
2 which I did not.

3 Dated October 24, 2022.

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6 James May
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1 in defending myself against Bungie's false accusation that I created, developed
2 or otherwise assisted in producing the "cheat software" at issue in this matter,
3 which I did not.

4 Dated October 24, 2022.

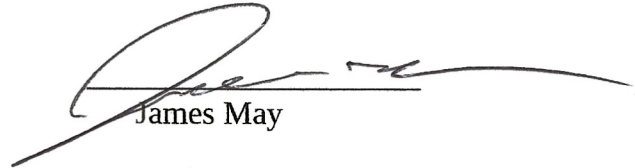
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6 James May
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EXHIBIT A

Case No. 21-CV-0817-TSZ

(Exhibit A to Declaration of James May)

Swiftly (AimJunkies)

Friday, September 21, 2018 8:23 AM

Identification

| | |
|-----------|---|
| Real Name | James May |
| Aliases | Swiftly, Sw1fty jjmay899 Sycore, sycore |
| Username | james |
| Computer | DESKTOP-14RNIQL |
| Location | Dayton, Ohio |
| Address | {tied via email via https://www.usphonebook.com/james-may/UUzMzYTO4czN1gIN3gIMzETN3MzR 2217 Polo Park Dr Dayton, OH 45439-3268 |
| DOB | |
| Emails | james.q3abc@gmail.com (verified) |

Tags

-

Activities

- Reverse Engineering
- Cheat Engine
- IDA
- Cheat Development

Media Profiles

- <https://myspace.com/swiftlovesnappy>

Profile Images



Recent IPs

- 67.219.146.74
- 67.219.146.72
- 174.97.110.18
- 67.219.146.77

Active Accounts

| Account ID | Tag | Ban Reason | Email | Notes |
|------------|-----|------------|-------|-------|
| | | | | |

Banned Accounts

| Account ID | Tag | Ban Reason | Email | Notes |
|---------------------|--------|------------|-----------------------|-------|
| 4611686018498316514 | Sw1fty | | james.q3abc@gmail.com | |

Device IDs

-- AAAAAAAAAAAAAAAAAAAAAAAAAA BBBB BBBB BBBB BBBB BBBB BBBB CCCCCCCCCCCCCCCCCCCCCCCCCC DDDDDDDDDDDDDDDDDDDDDDDDDDDDD EEEEEEEEEEEEEEEEEEEEEEEEEEE
02 C8BF42A465A84ABE9FB725F09880AFD 2ECBACCC73BADC8EF3C7F7D01F2528 383343ED06E7418890591C03DA07D9B2 55F8B25CDA0711E9B5E26045CB9A545B F8CC98CB772EFD79BAA71915E9A0F976
02 C8BF42A465A84ABE9FB725F09880AFD E4C75AEE91AF37B1C13AA3A2E01C3DC7 383343ED06E7418890591C03DA07D9B2 55F8B25CDA0711E9B5E26045CB9A545B F8CC98CB772EFD79BAA71915E9A0F976
02 C8BF42A465A84ABE9FB725F09880AFD F7FD31D14AC7B121805F3F8E4F471FF 383343ED06E7418890591C03DA07D9B2 55F8B25CDA0711E9B5E26045CB9A545B F8CC98CB772EFD79BAA71915E9A0F976
02 C8BF42A465A84ABE9FB725F09880AFD 6B5F7C138EEA1E9AAE7806E6F6E6963 383343ED06E7418890591C03DA07D9B2 55F8B25CDA0711E9B5E26045CB9A545B F8CC98CB772EFD79BAA71915E9A0F976

Tickets

- TT Machines: 8A83A649CD44D, 778B0F3802519
- <http://tickettrack/Ticket/Ticket.aspx?db=Tiger&d=118663444> (overlay)

Notes

Shows additional proof Swiftly and James are tied:
<https://steamidfinder.com/lookup/76561198003342345/>

Running reclasskernel64.sys
C:\Users\james\Desktop\ReClass.NET-Kernel\Plugin-master\bin\ReClassKernel64.pdb
Signed by "Phoenix Digital Group LLC" which is associated with AimJunkies

COD cheat development tied via email:
https://forum.mombotcheats.com/archive/index.php?t-215.html&_cf_chl_jschl_tk_=af5d679acc38520eda51385166644850c5279d9e-1614637127-0-AciZ1WhnW75M3SNhwG7EB3KdlnFcilv9CwaeBRSrOoCtL3sR7ANU9X_Yyh7KbnPuPd6Cte10zokJuFM_GwxxaD9Fde54mOm48PrxfMEvnIpWx_x1QLDrYE_rfMHsqDmc8ICSiQawIDtE0nf_sIbPoVENAswKUhtp1O_ssbIFftRhEsHdpNkr2kF_leIbZaCia_GOAA-eHTl0S_sLIJsLus-FsULbUvSWXba1mbH34diaEuH82d95IG5D6ozWlffVfQ-0ncGJxepV7Och53u7BoepuuROOGlrnMJe-uHxL1BcflEeHqXNEUpNN2TW2mRrvYJ8OexZA

- Above post references this youtube channel (which appears to belong to associate or alternate persona "berisko" which also posted in the above thread):
- <https://www.youtube.com/user/berisko01/videos>
 - Video description references to AimJunkies